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# Legislative Notice

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## S. 1873 – The American Missile Protection Act of 1998

Calendar No. 345

Reported from the Committee on Armed Services, without amendment, on April 24, 1998, by a vote of 10-7, with Sen. Lieberman not voting. With additional and minority views.

### NOTEWORTHY

- At press time, it was anticipated that a motion to file cloture on the bill would be offered on Monday, May 11, with a cloture vote likely for Wednesday.
- S. 1873, a bi-partisan bill sponsored by Senators Cochran and Inouye, would establish as U.S. policy, the deployment as soon as technologically possible of an effective National Missile Defense (NMD) system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized or deliberate.)
- A threat of ballistic missile attack on the United States already exists. Although unlikely, the threat of unauthorized or accidental launches from Russia or China is real, and may be heightened as the armed forces of the former Soviet Union undergo transition to a post-Cold-War posture. The United States also faces an imminent threat that stems from the growing, widely acknowledged proliferation problem. It is these areas of concern S. 1873 is meant to address.
- The bill does not mandate specific architectural elements of the NMD system, specific deployment dates, or changes to any arms control agreements. It allows the Department of Defense (DoD) complete flexibility in designing the NMD system; as such, S. 1873 establishes an overarching policy, not a detailed implementation plan, which would appropriately be left to the Department of Defense.
- According to the Congressional Budget Office, S. 1873 would have “no budgetary impact.”

## **BACKGROUND**

The Committee reported S. 1873 to the Senate for the following reasons:

### **1. Value of National Missile Defense (NMD)**

The Committee believes a commitment to deploying NMD will have two crucial impacts on U.S. security. First, it will deter proliferation by signaling to nations seeking to possess ballistic missiles in order to coerce or attack the United States, that such pursuit is a waste of time and resources. Second, if some aspiring states are not deterred, a commitment to deploy an NMD system will ensure America is protected from limited ballistic missile attack.

### **2. Need for a National Missile Defense**

The Clinton Administration's policy on NMD, as embodied in the "3+3 Deployment Readiness Program" (which assumes the United States will be able to clearly discern the emergence of a ballistic missile threat to our nation in sufficient time to deploy a defense) is based on three faulty premises, according to the Committee report. Each of the Administration's premises, and the Armed Services Committee's counterarguments, are discussed below.

#### ***Faulty Administration Premise #1: No Threat Currently Exists or is Emerging***

The findings section of S. 1873 disputes the Administration's view that there is no current or emerging threat to the United States from ballistic missile attacks. The findings section in S. 1873 documents a series of already existing and imminent threats.

While perhaps unlikely, the threat of unauthorized or accidental launches from Russia or China is real. There is also an imminent threat stemming from the widely acknowledged proliferation problem as articulated by senior Clinton Administration officials and by Congress. Evidence of this growing threat includes: the North Korean deployment of the 1,000 kilometer (km) No-Dong missile, and development of both a 2,000 km. medium-range ballistic missile and a 6,000 km. intercontinental ballistic missile. Most recently, Iran has made dramatic and sudden progress in its Shahab-3 and Shahab-4 medium range ballistic missiles. Pakistan recently tested a missile with a range of 1,500 km., five times greater than its next most capable missile. Further, the proliferation of technology, expertise and hardware for building a long-range ballistic missile is accelerating widely; spurred by advances in information technology and growing demand for space-launch vehicles, which are essentially ballistic missiles without warheads.

## ***Faulty Administration Premise #2: An Emerging Threat Will Be Easily Discernible***

Despite Administration assurances that the United States will be able to clearly identify emerging threats, the Intelligence Community has been repeatedly surprised by advances in ballistic missile technology achieved by less developed countries, as outlined in the Committee report. One such example involves the Iranian ballistic missile program.

In 1997, the Director of Central Intelligence (DCI) testified that Iran could have a medium-range missile by 2007. One year later, the DCI told the Senate that Iran could have such a missile much sooner than his previous assessment. And a State Department official testified in September of 1997 that Iran could develop this missile in "maybe one to one-and-a-half years, and it may be shorter than that," meaning as many as nine years sooner than had been predicted only a year earlier by the DCI.

Experience has shown that variables, such as the amount of outside assistance provided to rogue nations — factors which can significantly speed the acquisition of ballistic missiles, cannot be predicted reliably. In this case, the story of the Pakistani missile is instructive: On April 6, 1998, Pakistan launched a ballistic missile capable of reaching 1,500 km. Yet, a November 1997 Defense Department report on proliferation contained no mention of any effort by Pakistan to develop such a capability, crediting Pakistan with only a 300 km. short-range ballistic missile.

As highlighted by the Committee report, evidence of technological developments is often difficult to obtain. Even when such evidence is available, it is oftentimes difficult to discern just what it means until after the fact. The DCI told the Senate in 1997 that "gaps and uncertainties preclude a good projection of exactly when 'rest of the world' countries will deploy ICBMs."

## ***Faulty Administration Premise #3: When a Threat Emerges or Is Emerging, the U.S. Will Have Sufficient Time to Put A Defense in Place***

The Administration's policy of not committing to NMD deployment is based on the assumption that the United States can continue to tinker indefinitely with NMD technology, and then, at any time after the year 2000, deploy a system within three short years. The Committee believes such an assertion is faulty for two reasons:

- "Technology development" does not necessarily lead to deployment readiness. As the Committee report points out, the absence of an end-point or a deployment goal eliminates the driving force that moves a system towards readiness for the field.
- The U.S. experience has shown that missile defenses are well within the realm of technical possibility but still technically challenging. As the Committee report points out, the idea that the United States can spring from technology development to a deployed capability in three years does not accord with experience. At the same time, the Report highlights that the NMD program is the only Major Defense Acquisition Program where the development and deployment

of a system is held in limbo until the Intelligence Community can provide detailed characterization of some future threat.

The Committee believes the NMD program must be put on a more rational acquisition path, which includes a commitment to deploy as soon as the technology is ready. Testifying before the House in 1998, the Under Secretary of Defense for Acquisition and Technology stated, "There will be a system deployed. There is absolutely no question the nation will have to have missile defense in the future. The question is when." The Committee believes that S. 1873, by committing to deployment of NMD, will ensure the United States is prepared to meet the current and impending threat of limited ballistic missile attack.

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## **BILL PROVISIONS**

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The bill contains three sections:

### **Section 1. Short Title**

The bill is cited as the "American Missile Protection Act of 1998."

### **Section 2. Findings**

Cites numerous findings documenting the current and impending ballistic missile threat to the United States, proliferation concerns, quotes from leaders of rogue nations expressing the desire to acquire long-range missiles, Congressional actions on missile defense, Administration quotes on missile defense policy, and intelligence failures regarding technical innovations enabling rogue nations to obtain or develop ballistic missiles of increased range.

### **Section 3. National Missile Defense Policy**

States that it is the policy of the United States to deploy as soon as technologically possible, an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate).

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## **COST**

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According to an April 15, 1998 Congressional Budget Office estimate, "the bill, by itself, would have no budgetary impact. Because it would not affect direct spending or receipts, pay-as-

you-go procedures would not apply. Any budgetary impact would stem from separate implementing legislation or from annual authorization and appropriation bills."

### **Minority Views From Senators Levin, Kennedy, Bingaman, Glenn, Byrd, Robb, and Cleland.**

"We cannot support S. 1873....In our view, and in the view of the Secretary of Defense and the Chairman of the Joint chiefs of Staff, this legislation would undermine the carefully designed National Missile Defense (NMD) development and acquisition program currently in place by making a deployment decision now, before development is completed, without permitting consideration of all the critical factors that should inform a deployment decision. The result, in the worst case, could be to cause an increase in ballistic missile threats to the United States and a decrease in our security.

"S. 1873 is inconsistent with the 3 plus 3 NMD program in a number of very significant ways: it ignores the issue of the likelihood and extent of ballistic missile threats to the United States; it ignores the issue of affordability and cost-effectiveness; and it ignores the impact on current and future arms reduction agreements." [Note: these views reflect the views of Defense Secretary Bill Cohen and JCS Chairman General Henry Shelton provided to the Committee and described below.]

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### **ADMINISTRATION POSITION**

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Administration objections to S. 1873 are outlined in letters from Secretary of Defense Cohen and Chairman of the Joint Chiefs of Staff General Shelton.

#### **Bill Cohen, Secretary of Defense**

"I share with Congress a commitment to ensuring the American people receive protection from missile threats how and when they need it. S. 1873, however, would alter the "3+3" strategy so as to eliminate taking into account the nature of the threat when making a deployment decision. This could lead to the deployment of an inferior system less capable of defending the American people if and when a threat emerges. Because of this, I am compelled to oppose the adoption of the bill."

## **Gen. Shelton, Chairman of the Joint Chiefs of Staff**

"The bill and the NMD program are consistent on many points; however, the following differences make it difficult to support enactment. First and most fundamental are the conditions necessary for deployment. The bill would establish a policy to deploy as soon as technology allows. The [Administration's] NMD program requires an emerging ballistic missile threat as well as the achievement of a technological capability for an effective defense before deployment of missile defenses.

"Second, the bill asserts that the United States has no policy to deploy an NMD system. In fact, the NMD effort is currently a robust research and development program that provides the flexibility to deploy an initial capability within 3 years of a deployment decision.

"Third, I disagree with the bill's contention that the U.S. ability to anticipate future ballistic missile threats is questionable. It is possible, of course, that there could be surprises, particularly were a rogue state to receive outside assistance. However, given the substantial intelligence resource being devoted to this issue, I am confident that we will have the 3 years' warning on which our strategy is based.

"Fourth, the bill uses the phrase 'system capable of defending the territory of the United States.' The [Administration's] NMD program calls for the defense of only the 50 states. Expanding performance coverage to include all U.S. territories would have considerable cost, design, and location implications.

"Finally, the bill does not consider affordability or the impact a deployment would have on arms control agreements and nuclear arms reductions. Both points are addressed in the NMD Deployment Readiness Program and should be included in any bill on NMD."

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## **OTHER VIEWS**

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### **Additional Views of Senator Smith**

"Establishing a policy to deploy an NMD system as soon as technologically possible in no way means that a rigorous acquisition program should not be followed. Quite the opposite is true: it specifically implies that such a program would be implemented...In this sense, S. 1873 would require the NMD system to become a more 'normal' acquisition program than is currently the case with the Clinton Administration's '3+3' program, which the Director of BMDO has characterized as an 'extremely high risk' approach.

"Regarding the ABM Treaty, nothing in S. 1873 requires or encourages the United States to abrogate or violate the ABM Treaty.

"If the Administration is concerned about cost and technical risk, it should welcome S. 1873. The policy envisioned in S. 1873 would allow DoD to develop a program characterized by adequate testing and risk reduction....

"...It is important to bear in mind that S. 1873 would establish an overarching policy not a detailed implementation plan. That would appropriately be left to the Department of Defense. This was recognized by the Congressional Budget Office when it concluded that 'the bill, by itself, would have no budgetary impact.'

"In the end, the only legitimate argument against S. 1873 is one based on outright opposition to ever deploying an NMD system. If this is the true basis for opposition to this bill it should be publicly stated and not cloaked in misleading rhetoric related to issues not even addressed by the legislation."

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